

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
THIRTY-TWO THOUSAND DOLLARS)	
(\$32,000.00) SUPPORTING A)	
CASHIER'S CHECK, #84420757.)	
)	
Defendant.)	

VERIFIED COMPLAINT FOR FORFEITURE

COMES NOW Plaintiff the United States of America, by and through its attorneys, Richard G. Callahan, United States Attorney for the Eastern District of Missouri, and Richard E. Finneran, Assistant United States Attorney for said district, and for its Verified Complaint for Forfeiture states as follows:

NATURE OF THE ACTION

1. This is a civil action in rem brought by the United States, pursuant to 18 U.S.C. § 981, seeking forfeiture of all right, title, and interest in the above-captioned defendant property, which is property traceable to proceeds of a conspiracy to illegally import misbranded and adulterated prescription drugs into the United States, among other objects.

2. The defendant property is \$32,000.00 representing a portion of the proceeds of said conspiracy.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. §§ 1331,

1345, and 1355 because this is a civil action arising under the laws of the United States, because it is a proceeding of forfeiture, and because it has been brought by the United States.

4. This Court has jurisdiction over the parties pursuant to 28 U.S.C. §§ 1345 and 1355 because this is a proceeding for forfeiture, and because it has been brought by the United States.

5. Venue is placed in the Eastern District of Missouri pursuant to 28 U.S.C. § 1355 because an act giving rise to the forfeiture occurred in the Eastern District of Missouri.

BASIS FOR FORFEITURE

6. The defendant property is subject to forfeiture under 18 U.S.C. § 981(a)(1)(c) property traceable to proceeds of a conspiracy carry out various specified unlawful activities as set forth in detail below.

THE CONSPIRACY

7. Beginning in approximately March, 2010, Aestheticare, LLC made over fifty separate purchases of prescription drugs from an unlicensed wholesale drug distributor (“Company A”) that had not been approved for legal use in the United States by the United States Food and Drug Administration (“FDA”). The drugs were thereafter unlawfully smuggled and imported into the United States.

8. Company A did not provide any physical address. However, it noted that there may be “foreign transaction fees” for purchases of the drugs, and cited countries other than the United States as their place of origin, for example offering “Botox (Turkish),” for \$344.99 per vial. During the same time frame, FDA-approved versions of the drugs were sold through licensed wholesalers in the United States.

9. These unapproved drugs lacked the required labels, dosage, use instructions, manufacturing pedigree, or were otherwise different versions of the drugs approved for sale in the

United States, and were not provided to U.S. patients with reliable and safe drug storage and shipping methods that the laws of the United States required for any drugs used in the United States.

10. These drugs were therefore “unapproved,” “misbranded,” “adulterated,” or “counterfeit” under United States law.

11. Patients who were treated with the drugs purchased from Aestheticare, LLC did not know of the illicit nature of the drugs.

12. On or about January 24, 2012, an agent of Aestheticare, LLC received in interstate commerce two 100 I.U. vials of the misbranded prescription drug.

13. On or about March 21, 2014, the United States obtained \$32,000.00 in the form of a cashier’s check made payable to the United States Marshals Service from an agent of Aesthitcare, LLC.

14. The funds supporting the cashier’s check represent the proceeds of the illegal activities described above.

CLAIM

Count I - Forfeiture as Proceeds of the Conspiracy

15. Each of the foregoing allegations is hereby incorporated by reference as if fully set forth herein.

16. Section 321(g)(1) of Title 21 defines a “drug” to include any article (other than food) intended to affect the structure or any function of the body of man or other animals; and articles intended for use as a component of any articles.

17. No person can provide a drug to consumers in the United States unless it has first been approved by the FDA pursuant to 21 U.S.C. § 355(a).

18. Under Title 21, United States Code, Section 355(b)(1), before a new drug may be introduced into interstate commerce, the FDA must approve the manufacturing process, labeling, and packaging.

19. Section 352(a) of Title 21 provides that a drug is deemed to be misbranded if its labeling is false or misleading in any particular.

20. Section 351(a) of Title 21 provides that a drug is adulterated if it was prepared or packed or held under insanitary conditions where it may have become contaminated or if it was packed or held in a manner inconsistent with current good manufacturing practices.

21. Section 21 of Title 21 defines a “counterfeit drug” as either a drug or a label that bears a trade name that falsely represents who actually manufactured, packed, or distributed it.

22. Section 545 of Title 18 provides that no person may knowingly or willfully import or bring into the United States, any merchandise contrary to law, or receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law.

23. Section 545 of Title 18 further provides that the value of any merchandise introduced into the United States in violation of said section shall be forfeited to the United States.

24. Section 981(a)(1)(C) of Title 18 provides that “[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section 545 . . . , or a conspiracy to commit such offense” is subject to forfeiture

25. Aestheticare, LLC and Company A conspired to and did in fact knowingly import or bring into the United States drugs that were not FDA-approved, were misbranded in that they contained foreign labeling and instructions, and were adulterated in that the methods of drug

storage and shipment were not appropriate and did not provide adequate protecting against foreseeable external factors in storage and use that can cause deterioration or contamination of the drug products. Aestheticare, LLC and Company A did also receive, conceal, buy, sell, or facilitate the sale of said items contrary to United States law.

26. Also as part of the conspiracy, Aestheticare, LLC and Company A conspired to violate 18 U.S.C. § 545.

27. The defendant property is subject to forfeiture because it constitutes or is derived from proceeds traceable to the conspiracy to violate the foregoing criminal statutes.

28. Under Section 984 of Title 18, in any forfeiture action in rem in which the defendant property is funds deposited in an account in a financial institution, it shall not be necessary for the government to identify the specific property involved in the offense that is the basis for the forfeiture, and any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture.

WHEREFORE the United States prays that this Court decree that all right, title, and interest in the defendant properties be condemned and forfeited to the United States of America, and for such other and further relief as the Court deems just and proper.

Dated: May 8, 2014

Respectfully submitted,

RICHARD G. CALLAHAN
United States Attorney

/s/ Richard E. Finneran

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VERIFICATION

I, Charles Grinstead, hereby verify and declare under penalty of perjury that I am a Special Agent with the Federal Drug Administration Office of Criminal Investigations, that I have read the foregoing Verified Complaint and know the contents thereof, and that the matters contained in the Verified Complaint are true to my own knowledge and belief.

The sources of my knowledge and information and the grounds of my belief are the official files and records of the United States, information supplied to me by other law enforcement officers, as well as my investigation of this case, together with others, as a Special Agent with the Food and Drug Administration.

Pursuant to 28 U.S.C. ' 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 5/8/14

(date)



Charles Grinstead
Special Agent
FDA Office of Criminal Investigations